

OFFICE OF ADMINISTRATIVE LAW

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Sacramento, CA 95814
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DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk *jo*
DATE: 5/7/2015
RE: Return of Approved Rulemaking Materials
OAL File No. 2015-0324-05S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2015-0324-05S regarding Diesel Fuel Used in Farming Activities or Food Processing).

If this is an approved file, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped “ENDORSED FILED” by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation’s effective date. Additionally, the effective date of the regulation will be noted on OAL’s Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency’s regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; and regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

**State of California
Office of Administrative Law**

In re:
Board of Equalization

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2015-0324-05 S

Adopt sections:

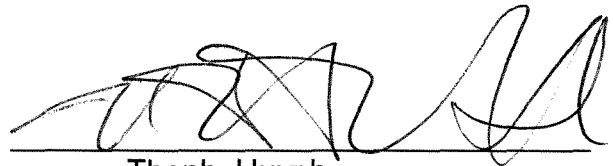
Amend sections: 1533.2

Repeal sections:

In this regulatory action, the Board is amending section 1533.2 of title 18 of the California Code of Regulations to update the definition of diesel fuel.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2015.

Date: 5/6/2015



**Thanh Huynh
Senior Attorney**

**For: DEBRA M. CORNEZ
Director**

**Original: Cynthia Bridges
Copy: Richard Bennion**

RECEIVED
MAY 7 - 2015
Board Proceedings

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-2014-1224-02	NOTICE FILE NUMBER Z-2014-1224-02	REGULATORY ACTION NUMBER 2015-0324-058	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2015 MAR 24 PM 3:32

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
PUBLIC USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2015, 22		PUBLICATION DATE 1/9/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Diesel Fuel Used in Farming Activities or Food Processing	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-1224-02 <i>per agency request</i> 5/6/15 <i>TH</i>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1533.2
TITLE(S) 18	REPEAL

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="checked" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
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☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Richard E. Bennion	(916) 445-2130	(916) 324-3984	rbennion@boe.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE March 23, 2015
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 06 2015

Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1533.2**

1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, and ending on December 31, 2012, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the

Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

- (1) 7.12 percent for the period July 1, 2011, through June 30, 2012;
- (2) 7.42 percent for the period July 1, 2012, through December 31, 2012;
- (3) 7.67 percent for the period January 1, 2013, through June 30, 2013;
- (4) 7.44 percent for the period July 1, 2013, through June 30, 2014; and
- (5) 7.25 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard to the field and from the field to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any liquid fuel that is commonly or commercially known, or sold or represented as a diesel fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered vehicle.

~~No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous~~

~~form, or alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.~~

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial

exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6357.1, Revenue and Taxation Code.

60022 and

per agency
request
5/6/15 TH

Appendix A

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state ~~general fund~~ portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to ~~Section~~ 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts¹ thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.²

Type of Farm Equipment and Machinery (or parts thereof) _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (if applicable) ³
ADDRESS	CITY	STATE, ZIP

¹ If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.

² Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.

³ If you are not required to hold a seller's permit, please enter "Not Applicable."